

**Senate Bill No. 1287**

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Passed the Senate      August 26, 2004

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*Secretary of the Senate*

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Passed the Assembly      August 24, 2004

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_\_

An act to add Sections 858.2, 2057.5, and 2058 to the Penal Code, relating to prisoners.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1287, Kuehl. Prisoners: incarcerated parents.

Existing law generally establishes criminal procedures regarding pleas.

This bill would require, at an arraignment where the defendant's charges could result in incarceration for a period of 6 months or more, the court to advise the defendant that, if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.

Existing law generally regulates the confinement and treatment of prisoners.

This bill would direct the Department of Corrections to make information available on the department's Web site for families of the incarcerated, and to provide, as specified, a child-friendly, positive environment for visits with prisoners and their minor children.

*The people of the State of California do enact as follows:*

SECTION 1. This bill shall be known and may be cited as the Families and Children of the Incarcerated Act.

SEC. 2. The Legislature hereby finds and declares the following:

(a) Inmates with strong family ties and support networks are more likely to succeed upon release. However, an increasing number of prisoners are returning home with little preparation to successfully reunite with their families and communities. The parole failure rate for newly released California prisoners is nearly twice that of the national average, an astounding 67 percent.

(b) The number of parents in prison has increased sharply in the last decade, up 60 percent nationally, and over one-half of state inmates report having at least one minor child. Prisoners in California state prisons are parents to an estimated 192,000 minor children, close to one-third of whom are under six years of age.



(c) A parent's arrest and imprisonment affects the whole family. The children of incarcerated parents are at high risk for failure in school, emotional withdrawal and delinquency, and are more likely to become incarcerated than their peers. Many of these children become involved in the state's troubled and expensive foster care system. Yet the state's judicial, correctional, and child welfare authorities have not attended to the specific needs of this at-risk population. This lack of attention places the children and ultimately the public at risk.

(d) It is the intent of the Legislature in enacting this act to reduce recidivism and intergenerational patterns of incarceration.

SEC. 3. Section 858.2 is added to the Penal Code, to read:

858.2. (a) The Legislature finds and declares that in many instances involving a defendant who is the custodial parent of a minor child or minor children, a plea of guilty or nolo contendere is entered without an appropriate warning of the special consequences for the defendant's parental rights that may result from the plea. Therefore, it is the intent of the Legislature, in enacting this section, to promote fairness to accused individuals and their minor children by requiring in cases involving custodial parents that an acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for a defendant's parental rights that may result from that plea. It is also the intent of the Legislature that the court in those cases provide the defendant a reasonable amount of time to appropriately attend to the needs of his or her minor children for safe and appropriate care prior to accepting a guilty plea or plea of nolo contendere.

(b) At arraignment of a defendant who has been charged with a misdemeanor or felony that could result in incarceration for a period of six months or more, the court shall advise the defendant on the record that if the defendant is a custodial parent, conviction of the offense for which he or she has been charged may have consequences for his or her parental rights.

(c) A motion to withdraw a plea based on the court's failure to advise the defendant pursuant to this section shall be entered in accordance with Section 1018.

(d) Failure by a court to provide the advisement required by this section prior to January 1, 2005, shall not require the vacation of



judgment and withdrawal of the plea or constitute grounds for finding a prior conviction invalid.

(e) Nothing in this section precludes the defendant, based on the failure of the court to advise pursuant to this section, from seeking relief from the conviction by writ, appeal, or any other avenue available through existing law.

SEC. 4. Section 2057.5 is added to the Penal Code, to read:

2057.5. The Department of Corrections shall provide information for families of the incarcerated on the department's Web site. This information may include:

(a) Information about how families may contact prisoners, including each institution's policies on contact by mail, contact by telephone, and visitation.

(b) Regularly updated information about the cancellation or modification of inmate visiting hours at each institution.

(c) Information for families on how they can provide support for the incarcerated family member.

(d) Information on how families can get involved to work for better outcomes for their incarcerated family member.

(e) Information about the programs and activities available at each institution that encourage productive relationships between families and inmates.

SEC. 6. Section 2058 is added to the Penal Code, to read:

2058. While ensuring the safety of correctional officers, visitors, and inmates, the Department of Corrections shall, whenever possible, provide a child-friendly, positive environment for visits with prisoners and their minor children.



Approved \_\_\_\_\_, 2004

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*Governor*

